ATTORNEY FOR APPELLANT:

DAVID W. STONE, IV
Stone Law Office & Legal Research
Anderson, Indiana

ATTORNEY FOR APPELLEE:

CHRISTOPHER A. CAGE
Anderson, Indiana

IN THE
COURT OF APPEALS OF INDIANA

IN RE: THE MARRIAGE OF:	)	
	)	
VICKIE L. (TETER) MAXEY,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 48A02-0509-CV-875
	)	
BARRY W. TETER,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON CIRCUIT COURT
The Honorable Joseph R. Kilmer, Master Commissioner
The Honorable Fredrick R. Spencer, Judge
Cause No. 48C01-0108-DR-655

August 31, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Vicki Maxey appeals the trial court's order denying her relief from the trial court's March 16, 2004, order that required her to reimburse her former husband, Barry Teter, for overpaid child support. Maxey raises one issue for our review: whether the trial court abused its discretion in denying her motion for relief from the March 16, 2004, order. Because Maxey's motion was not filed within one year after the March 16, 2004, order was entered, she is not entitled to relief from that order under Indiana Trial Rule 60(B), and therefore, we affirm.

Facts and Procedural History

Maxey and Teter were married on October 7, 1994. During the course of the marriage, two children, G.T. and Z.T., were born. The couple divorced on October 31, 2001, and Maxey was awarded custody of the children. Teter was granted visitation with the children and was ordered to pay child support.

In November of 2001, Teter suffered a severe heart attack that prevented him from working. He was eventually able to secure Social Security disability benefits, but in the interim he fell behind on his child support payments. To recover the back child support Teter owed her, Maxey obtained representation from the Madison County Title IV-D child support division.[1] While Maxey was pursuing back child support, she and Teter were also litigating child visitation issues. Maxey retained private counsel for the child visitation litigation.

On June 11, 2003, Teter filed a motion to abate his child support payments. The trial court held a hearing on July 8, 2003, at which it determined that a hearing on Teter's motion

to abate child support would be held on November 25, 2003. At the July 8, 2003, hearing, a prosecutor from the Title IV-D division represented Maxey. On October 3, 2003, attorney Elizabeth Bybee entered an appearance on behalf of Maxey.

The trial court held a hearing on Teter's motion to abate child support on November 25, 2003. Maxey was present at the hearing and was represented by a prosecutor from the Title IV-D division. Bybee was not present at the hearing. The trial court heard evidence and took the matter under advisement. Maxey's attorney from the Title IV-D division filed a trial brief on December 2, 2003, and Teter's attorney filed a trial brief on December 4, 2003. A copy of Teter's trial brief was served upon the Title IV-D prosecutor but not Bybee. On December 10, 2003, the trial court entered an order in which it found that Teter's child support should be reduced such that it would equal the benefits G.T. and Z.T. received from his Social Security disability benefits. The trial court also found that Teter's child support should abate back to the time his Social Security disability benefits started. With the child support issues seemingly resolved, the Title IV-D division, with the trial court's approval, withdrew its representation of Maxey on December 12, 2003. Bybee did not receive a copy of the trial court's December 10, 2003, order, or notice of the Title IV-D division's withdrawal of its representation of Maxey.

On December 16, 2003, Teter filed his Notice of Submission of Support Overpayment Calculation and Request for Reimbursement, in which he argued Maxey should reimburse him for $2,704.50 in overpaid child support. Maxey was served with a copy of Teter's notice, but Bybee was not. The trial court set a hearing for this matter on March 2, 2004.

[1] Title IV-D refers to Title 42 of the United States Code, Chapter 7, Subchapter IV, Part D.

The chronological case summary ("CCS") notes that "the prosecutor IV-D is no longer involved in this cause of action." Appendix at 12. The CCS indicates that notice of the hearing was issued directly to Maxey on February 11, 2004. Bybee did not receive notice of the March 2, 2004, hearing. Neither Maxey nor Bybee appeared at the March 2, 2004, hearing. On March 16, 2004, the trial court issued an order requiring Maxey to reimburse Teter for $2,704.50 in overpaid child support. Bybee did not receive a copy of this order.

On May 4, 2005, Maxey filed a motion requesting relief from the trial court's March 16, 2004, order. She argued that she was entitled to relief because her attorney, Bybee, did not receive notice of the March 2, 2004, hearing or a copy of the March 16, 2004, order. On July 7, 2005, the trial court denied Maxey's motion and this appeal ensued.

Discussion and Decision

Maxey argues that the trial court abused its discretion when it denied her motion for relief from the trial court's March 16, 2004, order. We disagree.

I. Standard of Review

In reviewing a trial court's determination whether to grant a motion for relief from a judgment or order, we do not reweigh the evidence. Beike v. Beike, 805 N.E.2d 1265, 1267 (Ind. Ct. App. 2004). "We review a trial court's grant or denial of a motion for relief from judgment under an abuse of discretion standard of review." Id. "An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances, or the reasonable, probable, and actual deductions to be drawn therefrom." Augspurger v. Hudson, 802 N.E.2d 503, 512 (Ind. Ct. App. 2004).

II. Relief from Order

Initially, Teter argues that Maxey has waived any error related to the denial of her motion for relief from the trial court's March 16, 2004, order because she failed to present an adequate record to permit this court to assess the trial court's determination. Our supreme court has indicated that appellate review of an issue may be waived if an appellant does not include a transcript of the appropriate trial proceedings. Reed v. State, 702 N.E.2d 685, 689 (Ind. 1998). Teter contends that the trial court held a hearing on Maxey's motion for relief from the March 16, 2004, order on May 24, 2005. For some reason, this hearing was not recorded by the court reporter. Teter correctly notes that, pursuant to Indiana Appellate Rule 31(A), Maxey could have prepared a verified statement of the evidence presented at the hearing, but she did not. Because of this, Teter concludes that Maxey has not presented an adequate record and has waived her claims.

The CCS indicates that the trial court set a hearing on Maxey's motion for May 24, 2005. There is no entry, though, showing that this hearing ever took place. Even if the hearing did occur, Maxey's failure to provide us with a transcript of the hearing or a verified statement of the evidence introduced at the hearing, does not automatically mean she has waived her claims. Maxey provided us with an appendix. The appendix contains sufficient materials to permit us to determine whether the trial court properly denied Maxey's motion for relief from the March 16, 2004, order. Therefore, Maxey's claims are not waived.

Maxey argues that she is entitled to relief from the trial court's March 16, 2004, order under Trial Rule 60(B). That rule provides:

> On motion and upon such terms as are just the court may relieve a party or his legal representative from an entry of default, final order, or final judgment, including a judgment by default, for the following reasons:

(1) mistake, surprise, or excusable neglect;
(2) any ground for a motion to correct error, including without limitation newly discovered evidence, which by due diligence could not have been discovered in time to move for a motion to correct errors under Rule 59;
(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(4) entry of default or judgment by default was entered against such party who was served only by publication and who was without actual knowledge of the action and judgment, order or proceedings;
(5) except in the case of a divorce decree, the record fails to show that such party was represented by a guardian or other representative, and if the motion asserts and such party proves that
  (a) at the time of the action he was an infant or incompetent person, and
  (b) he was not in fact represented by a guardian or other representative, and
  (c) the person against whom the judgment, order or proceeding is being avoided procured the judgment with notice of such infancy or incompetency, and, as against a successor of such person, that such successor acquired his rights therein with notice that the judgment was procured against an infant or incompetent, and
  (d) no appeal or other remedies allowed under this subdivision have been taken or made by or on behalf of the infant or incompetent person, and
  (e) the motion was made within ninety [90] days after the disability was removed or a guardian was appointed over his estate, and
  (f) the motion alleges a valid defense or claim;
(6) the judgment is void;
(7) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
(8) any reason justifying relief from the operation of the judgment, other than those reasons set forth in sub-paragraphs (1), (2), (3), and (4).

Ind. Trial Rule 60(B).

Maxey does not specify which of the reasons listed in Trial Rule 60(B) entitles her to relief from the trial court's March 16, 2004, order. Reasons five through eight are inapplicable here. Maxey then must seek relief under reasons one through four. When a party seeks relief under reasons one through four, Trial Rule 60(B) provides that her motion

for relief from an order must be filed not more than one year after the order was entered. Here, the order was entered on March 16, 2004. Maxey did not file her motion for relief from the March 16, 2004, order until May 4, 2005. Because Maxey did not file her motion for relief from the March 16, 2004, order within one year after the order was entered, she is not entitled to relief from that order under Trial Rule 60(B).

Even if Maxey had filed a timely motion for relief from the March 16, 2004, order, the fact that Bybee did not receive notice of the March 2, 2004, hearing or a copy of the March 16, 2004, order does not entitle Maxey to relief. Our supreme court has held that "a default judgment obtained without communication to the defaulted party's attorney must be set aside where it is clear that the party obtaining the default knew of the attorney's representation of the defaulted party in that matter." Smith v. Johnston, 711 N.E.2d 1259, 1262 (Ind. 1999). Here, the March 2, 2004, hearing and the March 16, 2004, order both dealt with child support. Up until December 12, 2003, Maxey was represented by a prosecutor from the Title IV-D division in all matters concerning child support. Bybee filed her appearance on October 3, 2003, but was not involved in or present at any of the child support litigation. The record suggests that the Title IV-D division was Maxey's attorney of record for child support issues, while Bybee was Maxey's attorney for visitation/parenting time issues.[2] Because Bybee was never involved in or represented Maxey during any of the child support litigation, it is not clear that Teter or the trial court knew that Bybee represented Maxey on this matter,

[2] This bifurcation of counsel is common in these sorts of proceedings and can be beneficial to a party like Maxey in that it reduces the party's legal fees by having the Title IV-D division prosecute any child support claim. However, it can also lead to the sort of problems seen here with notice and could be a potential source of abuse by the opposing party. The bifurcation of counsel permitted in these sorts of proceedings may represent a shortfall in the law that deserves the attention of our legislature.

and thus, were not required to provide Bybee with notice of the March 2, 2004, hearing or a copy of the March 16, 2004, order. Maxey was given notice of the March 2, 2004, hearing and chose not to attend or, apparently, to contact Bybee. This notice was sufficient to satisfy due process. Therefore, Maxey is not entitled to relief from the trial court's March 16, 2004, order under Trial Rule 60(B).

Conclusion

Maxey is not entitled to relief from the trial court's March 16, 2004, order because her motion for relief was not filed within one year after the March 16, 2004, order was entered. Even if Maxey had timely filed her motion for relief, she was not entitled to relief under Trial Rule 60(B) because it was not clear that Teter or the trial court knew that Bybee represented Maxey on child support issues. The trial court's order denying Maxey's motion for relief from the March 16, 2004, order is therefore affirmed.

Affirmed.

SHARPNACK, J., and NAJAM, J., concur.